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ABSTRACT

As part of a thorough review of Illinois state and federal school regulations, this report analyzes the disclosure provisions of school records laws in Illinois and establishes their features and purposes. The Federal Education Rights and Privacy Act (1976) and the Illinois School Student Records Act (1976) are examined on five criteria: (1) if they bring about a desirable condition in school records, (2) if they are crucial in bringing about a desirable condition, (3) if they are effective, (4) if they could be simplified, and (5) if they reflect a compelling state interest. The report concludes that there is no need for major revision of either state or federal laws on student records but recommends that the state law be changed in matters of obsolete language and provisions for local autonomy. Appendixes include the full text of both laws in question as well as the pertinent regulations adopted by the Illinois State Board of Education. (JW)

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SCHOOL STUDENT RECORDS MANDATE

A REPORT
and
PRELIMINARY RECOMMENDATIONS

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SCHOOL STUDENT RECORDS MANDATE REPORT

AND

PRELIMINARY RECOMMENDATIONS

ILLINOIS STATE BOARD OF EDUCATION

Walter Naumer, Jr., Chairman
State Board of Education

Donald G. Gill
State Superintendent of Education

Springfield, Illinois
October 1983

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A. Federal Education Rights and Privacy Act

B. Illinois School Student Records Act and Rules and Regulations to Govern School Student Records

C. Major Provisions of Federal and State Student Records Mandates

SCHOOL STUDENT RECORDS MANDATE REPORT

AND

PRELIMINARY RECOMMENDATIONS

I. INTRODUCTION

In September 1981, the Illinois State Board of Education adopted, and directed State Superintendent Donald G. Gill to implement, a plan for the careful and deliberative study of the mandates placed on elementary and secondary education in the state. This plan grew out of the increased concern at all levels of government for eliminating unnecessary or unproductive mandates and for increasing decision making at the level nearest the delivery of educational service. However, its emphasis on a deliberative analysis of the mandates reflected the Board's commitment to guarding against indiscriminate and precipitous removal of regulations.

The plan adopted by the Board called for three phases of study. Phase I reports were acted on by the Board in May 1983, and included special education, physical education, driver education, instructional programs, and bilingual mandates. This report on the school records mandate is one of five reports to be considered during Phase II; the other four will address compulsory attendance, transportation, health/immunization, and school day/school year.

The report which follows provides the staff analysis and preliminary recommendations regarding the school student records mandate in Illinois. This mandate is prescribed in the Federal Education Rights and Privacy Act (FERPA)(Appendix A) and the Illinois School Student Records Act (ISSRA) (Appendix B). The report includes the methodology of the study, the background and history of the mandate, a summary of the state and federal laws, an analysis of the mandate, summary and conclusions, and preliminary recommendations for action by the State Board of Education. Following a period of public comment and Board discussion, final recommendations will be presented.

II. METHODOLOGY

Information used to develop this report and the preliminary recommendations came from three primary sources:

1. Staff review of current state and federal statutes and rules and regulations on student records;

2. Published articles on the federal mandate;

3. Student handbooks containing sections on student records from various districts.

Most of the relevant literature on this topic, as identified through a computerized retrieval system, dealt with either analysis of or reaction to the federal statutes regarding student records. None of the literature dealt exclusively or predominantly with the Illinois statutes or regulations regarding student records.

Although State Board staff reviews the status of local school district compliance with the Illinois School Student Records Act, there has been no systematic compilation of data by which the actual implementation of the law could be assessed. However, selected information about local practices was gathered through a review of student handbooks which had been voluntarily submitted by local districts as a component of the Census of Secondary School Course Offerings (1981), conducted by the Illinois State Board of Education. Examination of a sample from the more than 700 handbooks yielded examples of local district policy statements on student records. Since this sample illustrated the existence of a broad range of practices and policies in local school districts, it was considered sufficient for the purposes of this study and therefore no attempt was made to review all of the student handbooks.

Additional information about local district implementation of the student records laws was obtained from two surveys of Regional Superintendents regarding the number of hearings conducted at that level, from a review of court cases, and through conversations with state and federal agency staff who have responsibility for various aspects of these statutes.

Analysis of the information obtained through these formal and informal procedures was accomplished through the use of five questions adopted by the State Board of Education at the inception of its study of mandates. These questions, common to each of the specific study areas, were:

1. What desirable condition or outcome is called for by the mandate?

   An essential step in determining the necessity of a requirement is being able to determine that it is purposeful, seeks to improve an existing condition, or creates a new and desirable condition. A mandate should be clearly directed towards an end which is stated in such a manner that its achievement can be reasonably assessed.

2. Is there evidence that in the absence of the mandate the condition or outcome will not be achieved?

   In this context evidence may consist primarily of historical or trend data or comparisons with other states in order to determine the likelihood of success in the absence of a requirement. One major factor for consideration could be the amount of time available for implementation; that is, whether the condition needs to be met by a date certain or whether it is of such a nature that time is not a driving factor.

3. As presently defined does (can) the mandate yield the desired results?

   While measuring results may be a relatively straightforward proposition, the more complex but necessary task of determining - or attributing - cause/effect must also be undertaken. The need exists to be reasonably assured that it is the mandate which yields the desired result and not other uncontrolled factors.

4. Could the mandate be defined and/or implemented differently and yield the desired results?

   The nature of the mandate and any required administrative mechanisms should be consistent with the most current and accepted research and professional experience. Regulations should be as simple and direct as possible and allow for efficient and effective use of resources.

5. Does the mandate reflect a compelling state interest?

   The state's interest in mandates can be based on such principles as equality, equity, efficiency, compliance with higher authority or health and safety. There can also be compelling interests that reflect the state's values in terms of required activities, experiences or settings. The maintaining or establishing of mandates should be tied directly to an identifiable need of the state to cause the required activity.

III. HISTORICAL OVERVIEW

The practice of maintaining student records began in 1820, when schools in New England began keeping records of enrollment and attendance (probably for fiscal and statistical reasons), and eventually grew to involve the collection of both specific objective data, and highly personal, subjective, anecdotal information concerning students and their families. Prior to the enactment of the federal student records act in 1974, student records often contained information which was judgmental and not necessarily relevant to the student's educational program.

Until 1974, the information in student records was typically unavailable to parents or students at the same time that it was made available to third parties, such as governmental agencies, prospective employers, college officials, law enforcement agencies, and insurance companies. In the event of a parent's discovery of inaccurate, misleading or inappropriate information in a student's record, there was no recourse other than civil court action which was an expensive, time consuming process. (Divoky, 1973)

There were in this pre-FERPA period several court cases dealing with student records. The decisions in these cases established several important principles which were later reflected in the federal statute. Groves and Groves (1981) summarized these decisions:

> Even though school records are not public, they are held in trust by public officers and parents have the right of inspection. Van Allen v. McCleary, 211 N.Y.S. 2d 501 (1961)
>
> Parents and students have a right to question entries in school records and must be afforded access to due process hearings on such questions. Dixon v. Alabama State Board of Education, 21 Misc. 2d 81; and Vought v. Van Buren Public Schools, 305 F. Supp. 1388 (dates not available)
>
> An important consideration in determining the appropriateness of certain kinds of information for student records is the possible impact upon the student's life, i.e., if it limits opportunity, the information should not be included. Einhar V. Maus, 300 F. Supp. 1169 (1969) and Hatter v. Los Angeles City Schools, 452 F. 2d 673 (1971)
>
> In addition, in all cases involving dissemination of information to third parties, courts consistently held that records should not be released to anyone not having a vested interest in the student.

In November of 1974, in response to a perceived abuse of student record data (McClung, 1977) and a growing national concern about personal documents and their impact on people (Groves and Groves, 1981), the Congress of the United States enacted the Family Educational Rights and Privacy Act (FERPA). Commonly referred to as the "Buckley Amendment" in recognition of its leading sponsor, former Senator James Buckley, this Act defined precisely who could or could not have access to student records, the conditions and procedures under which access could be allowed, and the information which could or could not be contained in such records. The emphasis in the statutory provisions was in keeping with the title of the Act -- that is, it

stressed the rights of parents and students and the confidentiality of information maintained about either. This Act and its related regulations applied to all educational agencies or institutions receiving federal funds.

Immediately following the enactment of FERPA, many states adopted comparable legislation concerning student records. In 1975, The Illinois School Student Records Act (ISSRA) was adopted, with an effective date of March 24, 1976. Subsequently, the Rules and Regulations to Govern School Student Records were written and disseminated to local school officials and discussed at statewide conferences. Section 2-4.3 of State Board of Education, Document 1 was revised to include compliance with the ISSRA as a component of school recognition status.

During the nine years since the enactment of FERPA and the eight years since the enactment of the ISSRA, there have been no substantial changes to either statute or their accompanying regulations. After the first round of activities aimed at disseminating information about these laws, there have been limited dissemination activities on the part of both the state education agency and the federal government. Interest in the subject continues in some areas (for example, Oregon adopted a comprehensive set of regulations regarding student data in 1981), but there no longer appears to be a significant focus on the issue of student records.

IV. SUMMARY OF FEDERAL AND STATE REGULATIONS

The Federal Educational Rights and Privacy Act and the Illinois School Student Records Act each focus on seven major areas of concern regarding school records:

1. Definition of student records;
2. Maintenance of student records;
3. Notification of rights to student and parents;
4. Student and parent access to student records;
5. Third party access to student records;
6. The provision of due process to challenge information contained in student records;
7. Compliance and sanctions.

Although there are differences in the specifics of the state and federal statutes, the two laws have several common themes:

1. The information collected and maintained by local school districts must meet certain tests of relevancy and accuracy;
2. Parents and (depending on their age) students have the right to review the contents of student records, to challenge their accuracy, and to be afforded due process in contesting the continued maintenance of such information as a part of the records;
3. Third party access to the records is limited and in most cases must be with the written permission of the parents or students.

A summary of the major provisions of the state and federal statutes is provided in Appendix C of this report.

V. ANALYSIS OF THE SCHOOL RECORDS MANDATE

What desirable condition or outcome is called for by the mandate?

Student records are maintained primarily for the benefit of the student. They are to ensure the availability of sufficient information for educational planning, for providing educational services, and for providing related services such as counseling. By defining confidentiality limitations and requiring full disclosure of such records to parents and to students when appropriate by virtue of age, the school records mandate allows for such records to be created and maintained but provides protection against the collection or maintenance of inaccurate, misleading information; inappropriate access to records by third parties; or the misuse of information.

The specific outcomes or conditions called for by the mandate are:

1. Procedures which inform parents about their rights in relation to student records;

2. Student records which contain only that information which is accurate and relevant to the student's educational program;

3. Procedures which limit third party access to student records; and

4. Procedures which provide for parental challenge of the content of student records.

Is there evidence that in the absence of the mandate the condition or outcome will not be achieved?

According to Chase (1975) and Divoky (1973), it was not unusual in the years prior to FERPA and the Illinois School Student Records Act for schools to deny parents access to certain records. At the same time, the schools provided the same records to outside groups such as the FBI, colleges, state agency personnel, employers, etc., often without notifying parents or students. Unsubstantiated personal judgments, vague incidents interpreted in subjective descriptive terms, negative connotations, and occurrences easily misinterpreted when read out-of-context were found in student records and were of sufficient influence to affect educational placement, future employment or college entrance. Such situations were a threat to students and constituted a vulnerable area of legal liability for educators and school boards.

Reaction among educators to the enactment of FERPA and the ISSRA was generally negative. Hock (1977) has reported that those who opposed the new laws predicted that the regulations would result in excessive cost, an administrative burden, sanitized records which were less useful to educators, and legalistic language that would be difficult to understand.

The observations of Hock, Chase, Divoky and other authors document that the mandate was in fact needed at the time it was adopted. Even though available data suggest that student and parental rights related to student

records are not regarded as a problem at this time (see following discussion), it would be imprudent for the state to conclude that the desired results could be achieved in the absence of the mandate. There is on the one hand too little evidence about the actual implementation of the mandate and, on the other hand, too much potential for serious harm to the individual student if these protections were not retained. Therefore, until there is more persuasive data to prove that the results could be achieved even in the absence of the mandate, a relaxation in requirements is not justified.

As presently defined does (can) the mandate yield the desired results?

There are limited data on which to assess the extent to which the mandate, as presently defined, can and does yield the desired results. However based on available information, it would appear that the objectives of the mandate are being met.

1. Although there are no systematic procedures in place for checking or monitoring the number of local-level hearings regarding student records in Illinois school districts, the infrequency of second level hearings reported by the Educational Service Region Superintendents, to whom student records issues not resolved at the local level are referred, and the virtual absence of complaints to the State Superintendent's office suggest that the number of local problems is minimal.

2. The federal mandate is monitored by the United States Department of Education's FERPA Office in response to parental complaints. Contacts with the representative of the Department of Education indicated that complaints to the FERPA Office are of low incidence. Each year, on a nationwide basis, there are approximately a dozen conversations or conferences with local school districts; since 1975, only about 200 official letters have been issued to correct violations. Federal funds have never been withheld from an educational agency because of a student records violation, even though there have been a number of threats to do so.

3. There have been no court cases regarding student records since the inception of the mandate.

4. The differences between the state and federal law do not appear to create a problem for local administrators or parents.

Given this information, there would appear to be no need for a major redefinition of the mandate.

On the other hand, there are two circumstances which would warrant minor modification of the Illinois School Student Records Act and the associated regulations.

1. The ISSRA requires that persons seeking to conduct research in local school districts and to obtain and use personally identifiable information about students must receive permission from the State Board of Education. This places the locus of

responsibility far from the local district, which is in the best position to judge the merits of the request and to monitor the conduct of the research. Since local administrators are by necessity familiar with the school records statutes and since virtually all districts have access to their own legal counsel, there appears to be no reason such decisions could not be adequately made at the local level.

2. Some of the language of the ISSRA regulations is now obsolete. For example, the regulations specify that "the review...shall be conducted by March 24, 1977."

Could the mandate be defined and/or implemented differently and yield the desired results?

Although the mandate appears to be satisfactory, there are certain aspects of its implementation which could and should be strengthened. The staff review of student handbooks indicated that school districts have adopted policies regarding student records which range from exemplary to inadequate. Listings of the kinds of student records and their locations within the district were infrequently provided and, in a few instances, there was no mention of access rights or the parents' right to a hearing. Since such handbooks constitute a common vehicle for informing students and parents about district policies, this range of information suggests that there are a number of districts in which parents and students may not be receiving adequate notification of their rights.

The State Board of Education has not conducted any major dissemination of information about student records since the period immediately after the adoption of the law and its regulations. Given the variation in local district practices regarding parental notification, it may now be appropriate for the State Board to renew its focus on the student records law and to develop model statements which districts could incorporate into their student handbooks.

These actions by the State Board to ensure that local school personnel, parents and students have information about the student records mandates would not only serve to meet one of the objectives of the mandates -- that is, parents and students who are informed about their rights -- but would, over time, clarify whether or not the absence of complaints and legal actions regarding student records is a reliable indicator of the effectiveness of the mandate.

Does the mandate reflect a compelling state interest?

Educational services were created by the state to ensure an opportunity for students to develop into responsible citizens with individual potential for successful lives. Student records follow students for many years and can have a direct bearing on their preparation for entrance into adult life. The enactment of state and federal laws attempted to ensure that public schools would take action to assure that school student records would be accurately and appropriately collected, maintained and disseminated. Students do not shed their legal rights at the school's door and the state has a compelling interest in respecting and protecting the legal rights of

students. Thus, the mandate governing student records does reflect a compelling state interest to ensure parents' and students' legal rights to access and privacy in the areas of student records defined by law.

VI. SUMMARY AND CONCLUSIONS

The student records mandates were adopted in the mid-1970's in response to a perceived abuse of school student record data and a growing national concern about personal documents and their impact on people. The federal and state statutes and their associated regulations have the following common themes:

1. The information collected and maintained by local school districts must meet certain tests of relevancy and accuracy;

2. Parents and (depending on their age) students have the right to review the contents of student records, to challenge their accuracy and to be afforded due process in contesting the continued maintenance of such information as a part of the records;

3. Third party access to the records is limited and in most cases must be with the written permission of the parents or students.

Examination of the mandate shows a close correlation between its objectives and the specific provisions of the law. Although specific information about the extent to which the objectives are in fact being met is limited, information which is available indicates that there is no need for a major revision of either the federal or state law. Local and regional hearings appear to be few in number; complaints to the federal FERPA Office have also been relatively few. There have been no new court cases since the inception of the federal and state statutes. Given this information, it would appear that the current law is generally satisfactory.

However, the presence of obsolete language in the state statute and regulations and an inappropriate requirement for state approval of local research using personally identifiable student records indicate the need for minor modifications in the law and regulations. In addition, the range of local district practices regarding notification to parents and students of their rights suggests the need for further information to be provided on uniform implementation of the student records mandates.

VII. PRELIMINARY RECOMMENDATIONS

1. The State Board of Education should develop and disseminate materials regarding student records which will assist districts in meeting their obligations under the mandate and ultimately provide adequate information to parents, students, and other interested parties. These would include the development of a model student records policy statement suggested for inclusion in local district student handbooks and such other materials as are deemed appropriate.

2. The State Board of Education should recommend legislation to amend the Illinois School Student Records Act to require that local districts review all requests to conduct research using individually identifiable student information, grant permission consistent with the requirements of the ISSRA, and maintain on file an affidavit signed by the researcher(s) and containing assurances that the research will be conducted in conformance with applicable laws and regulations. The form for this affidavit would be developed by the State Board of Education and disseminated for local use.

3. The State Board of Education should amend and revise the Rules and Regulations to Govern the School Student Records to remove obsolete language and to clarify terms.

4. The State Board of Education should develop procedures for the systematic collection of additional data which would provide for a more thorough and regular assessment of the extent to which there are problems in achieving the results sought by the student records mandate.

Selected References

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APPENDICES

APPENDIX A

FEDERAL EDUCATION RIGHTS AND PRIVACY ACT

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

Final Rule on Education Records

Notice of proposed rulemaking was published in the FEDERAL REGISTER on January 6, 1975 at 40 FR 1208 setting forth the requirements to be met by an educational agency or institution to protect the privacy of parents and students under section 438 of the General Education Provisions Act, as amended (added by section 513 of Pub. L. 93-380 and amended by section 2 of Pub. L. 93-568).

Three hundred and twenty-one letters of comment were received during the 60-day public comment period which closed on March 7, 1975. All comments were given consideration during the revision of the regulations, the first segment of which was published in final form on March 2, 1976 at 41 FR 9026. This document supersedes the previously published final regulation. The revoked regulation has been incorporated for republication at subparts A (Sections 99.2 and .3), C (Sections 99.21-23), and D (Sections 99.31 and .36) of this document, in order to provide the public with a single document containing all regulatory provisions pertaining to the Family Educational Rights and Privacy Act.

While the Department unquestionably supports the purpose of the law—to provide greater privacy safeguards to parents and students through the application of fair information practice—during the course of developing this final regulation it became evident that translating this intent into practice might create a number of problems. For our part, there was a conscious effort to mitigate any disclocating effects which the regulation might have and, at the same time, remain consistent with the statute.

We believe that some working experience with this regulation will be helpful to the Department in determining whether there is a need to modify this regulation or whether a recommendation for legislative change may be either necessary or appropriate.

As a result, the regulation is being issued in final form, effective upon publication, with the commitment that comments on the regulation and its operation, including its effect on the day-to-day activities of educational agencies and institutions during the 1976-77 school year, will be formally invited for a ninety-day period commencing July 1, 1977. These comments will be used in evaluating this regulation and will be shared with the Congress, as may be necessary, in order to improve the effects and effectiveness of the regulation and the statute upon which it is based.

In addition to welcoming comments on the substance of these regulations, the Department will also solicit public comment regarding the most appropriate means of enforcing the provisions of the Act. Regarding the means of enforcement available to the Department, while educational agencies and institutions are accountable for Federal funds they receive and must act in conformity with Federal law, the practice of using the expenditure of Federal funds as leverage may not be the most effective way to accomplish the objectives of this statute. We would be interested in your views as to whether other more appropriate means of enforcement than institutional funds cutoff are or should be available.

ANALYSIS OF EARLIER COMMENTS

A summary of the major comments received follows in order of the sections numbered as in the final regulations. Each summary of comments is followed by a response which indicates whether or not a change has been made in the regulations. Technical changes, such as the renumbering of sections, are listed under other changes at the end of each section or subpart.

SUBPART A—GENERAL

1. Section 99.1 *Applicability of part.*

Comment. A commenter suggested that the determination as to whether or not an educational agency or institution would be required to comply with section 438 of the Act and this part should be based on the actual receipt of funds and not on whether funds have been made available under an applicable program.

Response. Sections 438 (a)(1)(A), (a)(2), (b)(1), and (b)(2) state that "No funds shall be made available under any applicable program to any educational agency or institution. * * *"; therefore, no change has been made in the regulations. However, the term "available" should be read in this context as referring to funds which have been obligated by the U.S. Commissioner of Education.

Comment. Several commenters indicated that it would be helpful to have a list of Federal programs administered by the U.S. Commissioner of Education. One commenter suggested that the list of programs be published as a part of the regulations.

Response. It was determined that it would not be feasible to publish a list of Federal programs administered by the Commissioner as a part of the regulations because any such list would be subject to change and tends to become out-of-date soon after it is published.

A list of programs administered by the Commissioner as of March 1975 was published at 40 FR 10503-5 (March 6, 1975) and is available as a reprint from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Comment. Several commenters indicated they felt that if an educational agency or institution or students in attendance at the educational agency or institution received funds under any Federal program, the agency or institution should be required to comply with section 438 of the Act and this part.

Response. The statutory language limits its coverage to educational agencies and institutions to which funds are made available under programs administered by the U.S. Commissioner of Education. Section 438 was an amendment to Part C of the General Education Provisions Act, as amended. Section 421 of Part C states that:

> The provisions of this part shall apply to any program for which the Commissioner has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

In addition, the *Joint Statement in Explanation of Buckley/Pell Amendment* (*Congressional Record* at S. 21488, daily edition, December 13, 1974) stated in part:

> * * * by explicitly limiting the definition to those institutions participating in applicable programs, the amendment makes it clear that the Family Educational Rights and Privacy Act applies only to Office of Education programs and those programs delegated to the Commissioner of Education for administration * * * there has been some question as to whether the amendment's provisions should be applied to other HEW education-related programs such as Headstart or the educational research programs of the National Institute of Education. As rewritten, the limited nature of the Act's coverage should be clear.

Comment. A commenter asked if an educational agency or institution would be required to comply with Section 438 of the Act and this part if students in attendance at the agency or institution received funds under an applicable program administered by the Commissioner, such as the Basic Educational Opportunity Grant program, the Direct Student Loan program, or the Supplemental Educational Opportunity Grant program.

Response. Section 99.1, as revised, makes it clear that Section 438 applies to an agency or institution which either receives funds directly from the Office of Education, or which has students in attendance who receive funds from the Office of Education. For example, Section 438 would apply to an agency or institution which receives funds under the College Work-Study program, the Supplemental Opportunity Grants program, or the National Direct Student Loan program, or which has students who receive funds under the Basic Educational Opportunity Grant program or the guaranteed Student Loan program.

2. Section 99.3 *Definitions.*

Comment. Several commenters asked for clarification as to whether directory information included only the enumerated information, or if additional information could be designated as directory information.

Response. The definition of directory information has been modified to conform with the statutory definition; that is, that it "includes" the enumerated information. For guidance as to what further information could be included, the phrase "* * * and other similar information" has been added to the definition.

Comment. Several commenters recommended that the definition of education records be changed. The single suggestion most often made was that the term "school records" be used in place of "education records," and that school records

and non-school records be defined by their origin.

Response. Section 438(a)(4)(A) defines education records as "• • • those records, files, documents, and other materials which • • • contain information directly related to a student; and • • • are maintained by an educational agency or institution, or by a person acting for such agency or institution." Section 438(a)(4)(B) (i) through (iv) list those records which are not considered to be education records if conditions are adhered to by an educational agency or institution in the maintenance of the records. The statute does not provide for a differentiation between records maintained by an educational agency or institution based on the origin of those records.

Comment. Several commenters asked for clarification regarding what was meant by "institutional" in the definition of education records at section 438(a)(4)(B)(i).

Response. The word "institutional" appeared incorrectly in the copy of section 438 of the Act reprinted as a part of the proposed rules. The correct word was "instructional". The phrase at section 438(a)(4)(B)(i) should have stated "• • • records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto. • • •

Comment. Several commenters asked that the term "substitute" used in the definition of education records be defined.

Response. The term "substitute" in the definition of education records has been defined as "• • • an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position."

Comment. Several commenters asked for clarification as to what was meant by "same jurisdiction" in the definition of education records at section 438(a)(4)(B)(ii).

Response. Since the meaning may vary under applicable State law and factual situation, no attempt has been made to define by regulation the term "same jurisdiction."

Comment. Several commenters asked that the term "financial aid" be defined in the regulations.

Response. A definition of "financial aid" has been included. The definition states "a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution."

Comment. Several commenters asked for clarification regarding who could exercise parental rights and responsibilities on behalf of a student. Particular concern was expressed about whether a foster parent or other individual could act on behalf of a student.

Response. The definition of "parent" has been modified to include, in some instances, an individual who may not be the legal guardian of a student. The definition as revised states "'Parent' includes a parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian." An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that a State law, a court decree, or a legally binding instrument provides to the contrary.

Comment. A commenter suggested that an exception to the definition of "education records" be added for non-academic records kept by seminaries. The commenter indicated that seminaries and schools or departments of divinity or theology which are part of a college or university may maintain records on candidates for the priesthood or ministry, rabbinite, or religious orders. These records contain information on the spiritual and psychological development of such persons, and pertain to their suitability for the ministry, rabbinate or religious order, rather than to their educational performance. The commenter argued that the requirements of the Act should not apply to such records. Additionally, the commenter stated that the regulations should "exclude the application of the law when grants to the university comlex do not aid the seminary."

Response. As is made clear in the definitions of "education records", "student", and "educational agency or institution" contained in the Act, section 438 applies generally to all records directly relating to a student which are maintained by any part of an educational agency or institution which receives funds from programs for which the Commissioner has administrative responsibility. However, whether section 438 covers the type of record described by the commenter, or applies to the record-keeping policies of schools of divinity or theology which are part of an educational institution, may involve complex constitutional questions and interpretations of Supreme Court decisions. For this reason, such issues will be considered closely on a case-by-case basis as they arise, but will not at this time be addressed by regulation.

Comment. Several commenters asked if the definition of a student was intended to include or exclude certain individuals, such as former students.

Response. A new definition of student is provided which adopts much of the language used in section 438(a)(6). The definition states "'Student' • • • includes any individual with respect to whom an educational agency or institution maintains education records."

Other Changes. A definition has been added for "disclosure." The terms "access" and "release" previously used to distinguish between disclosure to a parent or student and disclosure to a third party, respectively, generated confusion easily avoided by the use of the new single term to cover both situations.

The definition of "office and review board" has been deleted because the functions are explained under Subpart E—Enforcement.

The definition of "panel" has been modified in order to avoid any confusion between a panel and the review board. A panel is a subunit of the review board designated to conduct a hearing.

3. Section 99.4 *Student rights.*

Comment. Several commenters indicated they felt that parents had a right to receive information pertaining to their son or daughter, particularly grade reports, even if their son or daughter was eighteen years of age and attending an institution of postsecondary education, since in many cases the parents were paying for the postsecondary education of their son or daughter.

Response. Section 438(d) states that:

> • • • whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the students shall thereafter only be required of and accorded to the student. (Emphasis added.)

Since this is a right provided by statute no change has been made in the regulations. An institution of postsecondary education is permitted by section 438 of the Act and this part to disclose information pertaining to an eligible student to the parents of the eligible student with the prior written consent of the eligible student or without the prior written consent of the eligible student if that student is a dependent as defined under section 152 of the Internal Revenue Code of 1954.

Comment. Three commenters suggested that there was an apparent conflict between sections 99.4(a) and 99.30(h) of the proposed rules (99.30(h) has been renumbered section 99.31(a)(8)) and asked for clarification.

Response. A new section 99.4(b) has been added to provide clarification and section 99.4(b) of the proposed rules has been redesignated section 99.4(c). Section 99.31(a)(8) permits, but does not require, an institution of postsecondary education to disclose information contained in the education records of an eligible student to the parents of the eligible student if that eligible student is a dependent as defined under section 152 of the Internal Revenue Code of 1954. Section 99.4(b) states that the status of an eligible student as a dependent of his or her parents for purposes of section 99.31(a)(8) does not otherwise affect his or her rights under section 438 of the Act and this part.

4. Section 99.5 *Formulation of institutional policy and procedures.*

Comment. Several commenters indicated they felt that the notice requirement under section 99.5 of the proposed rules was too burdensome. The commenters, in most cases, did not object to the requirement that notice be provided to parents of students or eligible students, but they did object to the effect of the inclusion of certain items in the no-

tice under section 99.5(b) on the size of the document.

Response. The amount of information required to be given to parents of students and eligible students for annual notification purposes under section 99.5 of the proposed rules has been reduced. A new section 99.6 *Annual notification of rights* has been added to the regulations.

Comment. A commenter stated that a basic requirement of the regulations should be that each educational agency or institution adopt a policy which is consistent with the requirements of section 438 of the Act and this part. The commenter pointed out that sections 438 (a)(1)(A), (b)(1) and (b)(2) contain explicit references to an educational agency or institution being required to adopt policies, and that sections 438 (a)(2), (a)(5)(B), (b)(4)(A), and (e) contain implicit references to the need for an educational agency or institution to adopt policies.

Response. New section 99.5 *Formulation of Institutional policy and procedures* requires that each educational agency or institution formulate and adopt a policy consistent with the minimum requirements of section 438 of the Act and this part. The policy is to be in writing, and copies are to be made available upon request to parents of students or eligible students.

Comment. Several commenters indicated that the requirement under section 99.5(c) of the proposed rules that an educational agency or institution provide the required notification in the language of the parents of a student or an eligible student was, in many cases, inappropriate. Institutions of postsecondary education pointed out that since proficiency in the English language is a condition for admission to postsecondary institutions in the United States the requirement to provide notification to an eligible student in his or her language made little or no sense.

Response. The requirement in section 99.5(c) of the proposed rules has been modified. New section 99.6(b) requires that each agency or institution of elementary and secondary education, when developing a policy of informing parents of students of their rights, provide for the need to effectively notify parents identified as having a primary or home language other than English. The requirement that an institution of postsecondary education provide notification in the language of the eligible student has been deleted from the regulations.

Comment. Several commenters indicated they felt that the requirements in section 99.5(b) of the proposed rules were excessive. The commenters were particularly concerned about the requirement that an educational agency or institution publish the name of the official who has been designated as responsible for each type of education record. They pointed out that the name was likely to change because different individuals would be appointed over a period of time. The commenters also expressed concern about attempting to list the persons who would have access to education records. They stated that it would be difficult, in advance, to specify all of the individuals who might have a need for access to education records.

Response. The requirement in section 99.5(b) of the proposed rules regarding the official who has been designated by the educational agency or institution as responsible for each type of record has been modified. New section 99.5(a)(2)(iv) requires that the policy adopted by an educational agency or institution of informing parents of students or eligible students of the types of education records maintained by the agency or institution specify the title and address of the individual who has been designated as responsible for each type of record. The requirement to specify the name of the individual has been deleted from the regulations.

The requirement in section 99.5(b) of the proposed rules regarding the listing of persons who have access to education records has been deleted from the regulations. New section 99.5(a)(3) requires that the policy adopted by an educational agency or institution includes a specification of the criteria that the agency or institution will use for determining which parties are "school officials" and what is considered to be a "legitimate educational interest."

5. Section 99.6 *Annual notification of rights and policy.*

Comment. Several commenters asked for clarification regarding the means to be used by an educational agency or institution to provide the notification required by section 99.5(a) of the proposed rules. The specific question most often asked was whether notification must be provided on an individual basis to parents of students or to eligible students, or whether the notification could be published in a student handbook, school catalog, or student newspaper, or posted on bulletin boards at the school. Two commenters indicated that it was unclear as to whether notification was to be provided to former students as well as to students currently in attendance at an educational agency or institution.

Response. New section 99.6 states that the annual notification of rights and policy shall be "* * * by such means as are reasonably likely to inform parents or eligible students * * *" The determination as to the actual means to be used is to made by each educational agency or institution. Some agencies and institutions may decide to provide notification on an individual basis; others may decide to publish the notification in a student handbook, school catalog, or student newspaper, or to post it on bulletin boards at the school. It was felt that the regulations should specify the criteria to be used in selecting a means of notification, but not the actual means of notification since the means may vary from agency to agency and institution to institution. In addition, new section 99.6 states that the notification is to be provided to parents of students in attendance or to eligible students in attendance at an educational agency or institution; therefore, making it clear that the notification of rights and policy need not be provided to former students or their parents.

Comment. Several commenters indicated they felt that the requirement for an educational agency or institution to provide notification on an annual basis was excessive. One commenter suggested that notification should be provided on a one-time basis at the time that a student enrolled in the educational agency or insitution.

Response. It was determined that the requirement for an educational agency or institution to provide notification on an annual basis was not excessive. Educational agencies and institutions generally issue or distribute student handbooks or catalog. Institutions of elementary and secondary education often send letters or distribute bulletins to parents of students at the start of each school year in order to inform them of the school's policies. The notification could, in many instances, be a part of a handbook or catalog. Institutions of elementary and secondary education often send letters or distribute bulletins to parents of students at the start of each school year in order to inform them of the school's policies. The notification could, in these instances, be included in the letters or bulletins. It was felt that notification on a one-time basis at the time that a student enrolled in an educational agency or institution was not sufficient to inform parents of students or eligible students of their rights. No change has been made in the requirement.

Comment. Several commenters stated they felt that the requirement under section 99.5(b)(1) of the proposed rules to provide notification to parents of students or to eligible students as to the types of education records maintained by the educational agency or institution was excessive in that it was not specifically required by section 438 of the Act.

Response. New section 99.6(a) states that each educational agency shall provide notification to parents of students or eligible students which is reasonably likely to inform them of their rights under the Act and this part. As was previously stated in the comment section which followed section 99.5 of the proposed rules, it was determined that it was essential to require that each educational agency or institution identify the types of education records maintained by it, so that parents of students or eligible student would be able to decide which education records they wished to inspect and review. A similar, but less burdensome listing of the information required by section 99.5(b)(1) of the proposed rules is required under new section 99.5(a)(2)(iv) to be included in the policy and procedures of the educational agency or institution.

Comment. A commenter recommended that each educational agency or institution be required to inform parents of students or eligible students of the right to file a complaint with the Department of Health, Education, and Welfare concerning an alleged failure by the agency or

institution to comply with section 438 of the Act and this part.

Response. The right to file a complaint with the Department of Health, Education, and Welfare concerning an alleged failure by an educational agency or institution to comply with section 438 of the Act is one of the rights which parents of students or eligible students must be informed of under section 438(e).

6. Section 99.7 *Limitation on waivers.*

Comment. A commenter asked for clarification regarding whether or not an eligible student was permitted to waive the right to inspect and review information, other than confidential letters and statements of recommendation, contained in his or her education records.

Response. Section 438(a)(1)(C) states that "A student or person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B). * * *" The confidential recommendations described in section 438(a)(1)(B)(iii) are of three types "* * * respecting admission to any educational agency or institution * * * respecting an application for employment, and * * * respecting the receipt of an honor or honorary recognition." The *Joint Statement in Explanation of Buckley/Pell Amendment* (*Congressional Record*, at S. 21489, daily edition, December 13, 1974) states in part, "And students may waive their right of access to confidential recommendations in three areas—admissions, job placement, and receipt of awards." The statutory language, in light of the joint statement, would not preclude an eligible student from waiving his or her right to inspect and review; however, an educational agency or institution may not require that any right accorded by the Act be waived.

Comment. Several commenters asked if there was any limit on the period of time which a waiver could be considered to be in effect, and if a waiver provided by an eligible student could be revoked by that student at a later time.

Response. Nothing in section 438 of the Act, or this part sets any limit on the period of time that a waiver shall be considered to be in effect. An eligible student may waive his or her right to inspect and review a confidential letter or statement of recommendation provided by a specific individual, or confidential letters and statements of recommendation provided for a specific purpose. The waiver will be considered to be in effect as long as the letters or statements of recommendation are maintained in the education records of the student. If an eligible student waives his or her right to inspect and review a specific class of letters and statements of recommendation, such as recommendations respecting employment, and later decides to revoke that waiver, the student would be able to inspect only those letters and statements of recommendation respecting employment which were placed in his or her education records after the date that the waiver was revoked.

Comment. A commenter asked what would happen if an eligible student had waived his or her right to inspect and review confidential letters and statements of recommendation provided for a specific purpose if these letters and statements were subsequently used for a different purpose.

Response. Section 438(a)(1)(C) states that "* * * [a] waiver shall apply only if * * * such recommendations are used solely for the purpose for which they were specifically intended." If an eligible student has waived his or her right to inspect and review confidential letters and statements of recommendation provided for a specific purpose, and these letters and statements of recommendation are subsequently used for a different purpose, the waiver would be considered void, and the eligible student would have the right to inspect and review the letters and statements of recommendation.

Other Changes. Section 99.6 of the proposed rules has been renumbered section 99.7.

7. Section 99.8 *Fees.*

Comment. Several commenters asked if an educational agency or institution could charge a fee for copies of education records.

Response. New section 99.8 states that an educational agency or institution may charge a reasonable fee for copies of education records which are made for parents of students, students, or eligible students.

SUBPART B—INSPECTION AND REVIEW OF EDUCATION RECORDS

8. Section 99.11 *Right to inspect and review education records.*

Comment. A commenter suggested that language be added to section 99.11 stating that when parents are separated or divorced and one parent has been given custody of their child by agreement or a court order that both natural parents will have the right to inspect and review the education records of their child.

Response. Nothing in section 438 of the Act and this part is intended to effect the status of an agreement or court order under applicable State law regarding the custody of a child, or the exercise of rights on behalf of a child by separated or divorced parents. Paragraph (c) has been added to clarify this position.

Comment. A commenter recommended that the regulations state that an official of an educational agency or institution has a right to be present whenever the parent of a student or an eligible student inspects and reviews the education records of the student.

Response. The determination as to whether or not an official of the educational agency or institution will be present whenever the parent of a student or an eligible student inspects and reviews the education records of the student has been left up to each educational agency or institution. Nothing in section 438 of the Act or this part would preclude an educational agency or institution from adopting a policy which would require the presence of an official during the inspection and review of education records, if that policy would not operate to effectively prevent the exercise of rights by the parent or student.

Other Changes. New section 99.11 incorporates requirements from sections 99.13 and 99.15 of the proposed rules. The requirement that an educational agency or institution comply with a request to inspect and review education records within a reasonable period of time, but in no case more than forty-five days after the request has been made has been incorporated into section 99.11(a). Section 99.13 (c) and (d) of the proposed rules have been incorporated as sections 99.11(b) (1) and (2) of the regulations. This change was made in order to consolidate provisions pertaining to the right to inspect and review education records in one section.

9. Section 99.12 *Limitations on right to inspect and review education records.*

Comment. Several commenters objected to confidential letters and statements of recommendation which were placed in the education records of an eligible student before January 1, 1975, being exempted from inspection and review by the eligible student.

Response. Section 438(a)(1)(B) states that:

> The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education * * * confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975. * * *

No change has been made in the regulations.

Comment. Several commenters objected to an eligible student being able to inspect and review letters and statements of recommendation which were placed in his or her education records after January 1, 1975. Two commenters felt that if letters and statements of recommendation were open to inspection and review by an eligible student it would be difficult for an individual who had been asked to write a recommendation to provide an honest assessment of the eligible student's abilities.

Response. Section 438(a)(1)(A) states that the parent of a student or an eligible student has the right to inspect and review the education records of the student. Section 438(a)(1)(C) permits an individual who is an applicant for admission to an agency or institution of postsecondary education or is a student in attendance at an agency or institution of postsecondary education to waive his or her right to inspect and review confidential recommendations respecting admission to an educational agency or institution, respecting an application for employment, and respecting the receipt of an honor or honorary recognition as long as certain conditions are met by the educational agency or institution including that:

> Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

No change has been made in the regulations. But additional waiver provisions were added.

Comment. Several commenters asked for clarification regarding whether or not an applicant for admission to an educational agency or institution has a right to inspect and review education records.

Response. The right to inspect and review education records is provided to the parent of a student or an eligible student. An applicant for admission to an educational agency or institution who is unsuccessful in his or her application may not be considered a student for purposes of section 438 of the Act or this part. The definition of student at section 438(a)(6) states in part: "* * * student * * * does not include a person who has not been in attendance at such agency or institution."

10. Section 99.13 *Limitation on destruction of education records.*

Comment. A commenter stated that an educational agency or institution should be permitted to destroy education records after a specified period of time.

Response. Generally, educational agencies and institutions are not precluded from destroying records unless there is an outstanding request to inspect and review them. The length of time which education records are required to be maintained by an educational agency or institution is, in many cases, determined under applicable State law or agency or institutional regulations. No change has been made in the regulations.

Comment. A commenter recommended that each educational agency or institution be required to provide notification to parents and eligible students 60 days in advance of the destruction of any education records.

Response. Nothing in section 438 of the Act and this part would preclude an educational agency or institution adopting a policy of providing notification to parents of students, and eligible students prior to the destruction of any education records. Such a requirement might work an undue burden on educational agencies or institutions which, though having a policy of destroying certain materials, purge records on a day-to-day basis rather than on a fixed schedule. No change has been made in the regulations.

Other Changes. Section 99.14 of the proposed rules has been renumbered section 99.13. Section 99.15 of the proposed rules has been deleted because it was redundant. Sections 99.13 (c) and (d) were redesignated sections 99.11 (b)(1) and (b)(2). The other paragraphs in section 99.13 have been deleted because they were redundant.

SUBPART C—AMENDMENT OF EDUCATIONAL RECORDS

11. Section 99.20 *Request to amend education records.*

Comment. Several commenters indicated they were concerned that an educational agency or institution might use the informal proceedings under section 99.21 of the proposed rules to delay in providing the parent of a student or an eligible student with an opportunity for a hearing to seek the correction of education records.

Response. Section 99.21 of the proposed rules has been deleted. New section 99.20 states that if a parent of a student or an eligible student believes that information in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student, the parent or the eligible student may request that the educational agency or institution amend the records. The educational agency or institution must decide whether to amend the education records within a reasonable period of time of receipt of the request. If the educational agency or institution decides to refuse to amend the education records of the student, the agency or institution must inform the parent of the student or the eligible student of the right to a hearing. If concerned that the educational agency or institution is utilizing informal attempts to reconcile differences as a delaying tactic, the parent or eligible student may exercise his right to a hearing without benefit of the decision from any informal proceeding.

12. Section 99.21 *Right to a hearing.*

Comment. A commenter suggested that the right to a hearing to seek the correction of information contained in the education records of a student be limited to permanent education records which are not more than three years old.

Response. The statute does not provide for such a time limitation. Section 438(a)(2) states that:

> the parents of students who are or have been in attendance at a school of such agency or such institution are provided an opportunity for a hearing * * * to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students. * * *

In addition, the fact that the right is provided to parents of students "who * * * have been in attendance * * *" as well as to parents of students "who * * * are in attendance, * * *" makes it clear that the right to a hearing may not be denied because the education records are more than three years old. The purpose of the hearing is "to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained. * * *" in the education records of a student regardless of when the information was entered in the education records. No change has been made in the regulations.

Comment. A commenter recommended it be made explicit that when an educational agency or institution finds that information contained in the education records of a student is inaccurate, misleading, or otherwise inappropriate that the information must be corrected or deleted from the education records.

Response. New section 99.21(b) states that if, as a result of a hearing, an educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the rights of the student, the agency or institution shall amend the education records of the student accordingly, and so inform the parent of the student or the eligible student in writing.

Comment. A commenter requested clarification regarding whether or not a hearing could be requested by a parent of a student or an eligible student to contest the assignment of a grade.

Response. A hearing may not be requested by a parent of a student or an eligible student to contest the assignment of a grade; however, a hearing may be requested to contest whether or not the assigned grade was recorded accurately in the education records of the student. The *Joint Statement in Explanation of Buckley/Pell Amendment* (*Congressional Record* at S. 21488, daily edition, December 13, 1974) stated in part:

> There has been much concern that the right to a hearing will permit a parent or student to contest the grade given a student's performance in a course. That is not intended. It is intended only that there be procedures to challenge the accuracy of institutional records which record the grade which was actually given. Thus, the parents or student could seek to correct an improperly recorded grade, but could not through the hearing required pursuant to this law contest whether the teacher should have assigned a higher grade because the parents or student believe that the student was entitled to the higher grade.

Other Changes. Section 99.20 of the proposed rules has been renumbered section 99.21.

14. Section 99.22 *Conduct of the hearing.*

Comment. Several commenters expressed concern that the standards for the conduct of a hearing did not adequately satisfy due process requirements. The commenters recommended the inclusion of additional requirements to protect parents and students such as: (1) specifying the period of time within which educational agencies or institutions must hold a hearing, (2) requiring that the hearing be held at a time and place convenient for the parent or student, (3) permitting the parent or student to be assisted by an attorney or other representative of his or her choice, (4) providing the parent or student with an opportunity to present evidence relevant to the issues, (5) requiring that the hearing be conducted by an official who is not an employee of the school, agency, or institution, (6) requiring that the hearing be conducted and the decision be provided in the primary language of the parent or student, and (7) requiring that the decision be based solely on evidence presented at the hearing.

Response. New section 99.22 includes many, but not all of the recommended requirements. In some instances the recommended requirements have been modified. Section 99.22(a) states that the parent of a student or an eligible student shall be given notice of the date, place and time reasonably in advance of the hearing. An educational agency or institution must make a reasonable effort to schedule the hearing at a time and place which is convenient for the parent or eligible student and conduct

the hearing in a manner that will not effectively prevent the exercise of the parents' or students' rights.

Section 99.22(c) states that a parent of a student or an eligible student shall be afforded a full and fair opportunity to present evidence which is relevant to the issues, and that a parent or an eligible student may be assisted or represented by an individual of his or her choice at his or her own expense, including an attorney.

Section 99.22(e) states that the decision of an educational agency or institution shall be based solely upon the evidence presented at the hearing. In addition, the decision must include a summary of the evidence and the reasons for the decision.

It was determined that it was not feasible to set a specific period of time within which each educational agency or institution must hold a hearing. It was felt that the requirement under section 99.22(a) that a hearing be held within "• • • a reasonable period of time after the educational agency or institution has received the request • • •" when combined with the requirement under section 99.5(a)(5) that each educational agency or institution specify, as part of the policy it is required to formulate and adopt, the reasonable time limits under which it shall be obligated to act under the requirements of section 99.22(a) provides adequate protection to parents and students.

It was determined that the requirement that the hearing be conducted by an agency or institutional official or other party, who does not have a direct interest in the outcome of the hearing, provides adequate protection to parents and students. Nothing in section 438 of the Act or this part would preclude an educational agency or institution from employing a hearing examiner to conduct the hearing; however, the decision to abide with the determination of the hearing examiner must be the decision of the educational agency or institution.

It was determined that the requirement that an educational agency or institution conduct a hearing and provide the decision in the primary language of the parent or student would in many cases be burdensome. A parent or an eligible student has a right under section 99.22(c) to "• • • be assisted or represented by individuals of his or her choice at his or her own expense. • • •" If a parent of a student does not speak English he or she could also be assisted by another individual who is qualified to serve as an interpreter. An educational agency or institution which serves students in an area where the primary or home language of the parents and students is a language other than English, is encouraged, but not required, whenever possible to conduct the hearing and provide the decision in the primary or home language of the parents and students.

Other Changes. Section 99.22 of the proposed rules entitled *Formal proceedings* has been retitled *Conduct of the hearing.*

SUBPART D—DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION FROM EDUCATIONAL RECORDS

15. Section 99.30 *When prior consent for disclosure required.*

Comment. Several commenters objected to the requirement that the names of the parties to whom information from the education records of a student is to be disclosed must be included as a part of the written consent.

Response. The requirement to include the names of the parties to whom information from the education records of a student is to be disclosed has been deleted. New section 99.30(c) states that the written consent must indicate "• • • the party or class of parties to whom the disclosure may be made."

Comment. Two commenters objected to the requirement that the consent to disclose information from the education records of a student must be a written consent.

Response. This is a statutory requirement. Section 438(b)(2)(A) specifies that information from the education records of a student may not be disclosed, except to particular parties or under particular circumstances, unless "• • • there is written consent from the student's parents. • • •" No change has been made in this requirement.

Comment. Several commenters indicated that it would be extremely difficult for an educational agency or institution to determine if a parent, particularly in the case of separated or divorced parents, has the authority to give consent for the disclosure of information from the education records of his or her child.

Response. New section 99.30(b) states that whenever written consent is required for the disclosure of information from the education records of a student, an educational agency or institution may presume that a parent of a student giving consent has the authority to do so, unless the agency or institution has been provided with evidence that the parent does not have the authority under applicable State law.

Comment. Several commenters indicated they felt that the requirement in section 99.33(c) of the proposed rules, which provided that when an institution was a guardian for a student an independent party must be appointed to consent to the disclosure of information from the education records of a student was inappropriate.

Response. The requirement that an independent party be appointed to consent to the disclosure of information from the education records of a student has been deleted. If an institution has been appointed the guardian of a student under applicable State law, the institution may exercise the rights provided to the parent of a student, unless it is precluded from doing so by another Federal or State statute.

Other Changes. New section 99.30 *When prior consent for disclosure required* incorporates material which appeared in sections 99.31 *Content of Consent* and 99.33 *Authority of parent to give consent.*

16. Section 99.31 *When prior consent for disclosure not required.*

Comment. Several commenters indicated they felt that there were additional individuals, institutions, agencies, or organizations to whom information from the education records of a student, should be disclosed without the need for obtaining the written consent of a parent of a student or an eligible student.

Response. Section 438(b)(1)(A) through (I) specifies the individuals, institutions, agencies, or organizations to whom or circumstances under which information from the education records of a student may be disclosed without the written consent of a parent of a student or an eligible student. Since this is determined by statute no change has been made in the regulations.

Comment. Several commenters requested clarification regarding who would decide which school officials could obtain information from the education records of a student without the written consent of a parent of a student or an eligible student because the official had a "legitimate educational interest" in the receipt of the information.

Response. Section 438(b)(1)(A) specifies that an educational agency or institution may disclose information from the education records of a student without the written consent of a parent of a student or an eligible student to "• • • other school officials, including teachers within the educational institution or local educational agency who have been determined by such agency or institution to have legitimate educational interests; • • •." Section 99.5(a)(3) indicates that each educational agency or institution include as a part of the policies and procedures • • • a specification of the criteria for determining which parties are 'school officials' and what the educational agency or institution considers to be a 'legitimate educational interest', • • •."

Comment. Two commenters asked for clarification regarding to whom and for what purposes a disclosure of information from the education records of a student could be made in connection with financial aid without the written consent of a parent of a student or an eligible student.

Response. New section 99.31(a)(4) specifies that a disclosure of information from the education records of a student may be made without the written consent of a parent of a student or an eligible student if the disclosure is to a party which is the source of or administers the financial aid for which a student has applied, if the information is required to determine the eligibility of the student for the financial aid, or to enforce the terms of the financial aid award.

Comment. Several commenters asked for clarification regarding the exception which allows an institution of postsecondary education to disclose information from the education records of an eligible student to a parent if the eligible student is a dependent.

Response. Section 438(b)(1)(H) permits, but does not require, an educational agency or institution to disclose information from the education records of an eligible student to a parent if the eligible student is a dependent as defined in the Internal Revenue Code of 1954. If an educational agency or institution decides to adopt a policy of disclosing information from the education records of a dependent eligible student, the agency or institution will need to establish a procedure for determining whether or not the eligible student is a dependent as defined by the Internal Revenue Code. Some educational agencies or institutions may decide to ask an eligible student at the time of registration whether or not he or she is a dependent of his or her parents; other educational agencies or institutions may decide to require that a parent submit an affidavit stating that the eligible student is a dependent for income tax purposes. Nothing in section 438 of the Act or this part requires that a particular procedure be adopted for the purpose of establishing dependency.

Comment. Several commenters indicated that in many instances it would be difficult for an educational agency or institution to notify a parent of a student or an eligible student, particularly the parent of a former student or a former eligible student, of the receipt of a judicial order or subpoena in advance of the compliance therewith. Two commenters suggested that the requirement be that an educational agency or institution make a reasonable effort to provide the notification in advance of complying with the judicial order or subpoena.

Response. New section 99.31(a)(9) states that an educational agency or institution must make "• • • a reasonable effort to notify the parent of a student or the eligible student of the order or subpoena in advance of compliance therewith; • • •."

Comment. Several commenters asked for clarification as to whether an educational agency or institution was required to disclose information from the education records of a student in those cases where the information could be disclosed without the written consent of a parent of a student or an eligible student.

Response. New section 99.31(b) states that "This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section."

Other Changes. Section 99.31 *When prior consent for disclosure not required* incorporates material which appeared in Section 99.30 *Consent of the proposed rules.*

17. Section 99.32 *Record of disclosures required to be maintained.*

Comment. Several commenters objected to the requirement that an educational agency or institution maintain a record of parties who had requested, as well as those who had obtained, information from the education records of a student.

Response. Section 438(b)(4)(A) requires that an educational agency or institution

> maintain a record, kept with the education records of each student, which will indicate all individuals, • • • agencies, or organizations which have requested or obtained access to a student's education records • • •

The statute requires that a record be maintained of those parties who have "requested" information as well as those to whom information has been disclosed. No change has been made in the regulations.

Comment. A commenter asked for clarification regarding whether a record must be maintained of a disclosure of information to a parent of a student or an eligible student of information contained in the education records of the student.

Response. New section 99.32(a) (replacing proposed section 99.38) has been modified to make it clear that an educational agency or institution need not maintain a record of a disclosure of information to a parent of a student or an eligible student of information from the education records of the student.

Comment. Several commenters requested clarification as to whether or not an educational agency or institution is required to maintain a record of the disclosure of directory information.

Response. Section 99.32(a) makes it clear that an educational agency or institution is not required to maintain a record of the disclosures of directory information. Section 99.37 sets forth the requirements to be adhered to in the disclosure of directory information.

Comment. Two commenters asked for clarification regarding how long the record of disclosures of information contained in the education records of a student must be retained by an educational agency or institution.

Response. The record of disclosures of information contained in the education records of a student is considered to be a part of the education records of a student; therefore, the record of disclosures must be retained as long as the education records of a student to which they relate are maintained by an educational agency or institution.

Other Changes. Section 99.38 *Record of access* of the proposed rules has been renumbered and retitled section 99.32 *Record of disclosures required to be maintained.*

18. Section 99.33 *Limitations on redisclosure.*

Comment. A commenter asked for clarification as to whether information contained in the education records of a student which is disclosed to a centralized personnel bureau could be referred to various offices which might wish to consider a student for employment.

Response. Section 99.33(a) (proposed 99.39) makes it clear that when information contained in the education records of a student is disclosed to an institution, agency, or organization the information may be used by its officers, employees, and agents; but only for the purpose for which the disclosure was made.

Comment. A commenter asked for clarification regarding whether information disclosed from the education records of a student to a third party before the effective date of section 438 of the Act could be redisclosed without the written consent of a parent of a student or an eligible student.

Response. The statutory requirement that an educational agency or institution not release information to a third party except on the condition that the information not be redisclosed without the written consent of the parent or eligible student was not operative until the effective date of the Act. The condition cannot, therefore, be imposed with respect to information released prior to the effective date of the Act.

Comment. A commenter suggested that an educational agency or institution be required to obtain a written assurance from a third party that the party will not disclose any information from the education records of a student without the written consent of a parent of a student or an eligible student.

Response. Section 99.33(b) which provides a procedure to meet the requirement of section 438(b)(4)(B) requires that each educational agency or institution inform a third party to whom information from the education records of a student is disclosed that the third party may not disclose any information without the written consent of a parent of a student or an eligible student. However, nothing in section 438 of the Act or this part would preclude an educational agency or institution from adopting a policy of requiring a written assurance from a third party before disclosing information from the education records of a student.

Other Changes. Section 99.39 *Transfer of information by third parties* in the proposed rules has been renumbered and retitled section 99.33 *Limitations on redisclosure.*

19. Section 99.34 *Conditions for disclosure to officials of other schools and school systems.*

Comment. Several commenters indicated that it would be extremely difficult for an educational agency or institution to notify a parent of a student or an eligible student of the transfer of the education records of a student to another agency or institution, because usually the educational agency or institution did not have a new address for the parent or eligible student.

Response. New Section 99.34(a) requires that each educational agency or institution transferring the education records of a student make a reasonable effort to notify a parent of a student or an eligible student of the transfer of the records. Under the revised regulation, this requirement is met if the agency or institution includes a notice in its policies and procedures developed under Section 99.5 that it forwards education records to a school, on request,

in which the student seeks or intends to enroll. The requirement would also be met if a letter is sent to the last known address of the parent or eligible student. An educational agency or institution may transfer the records without waiting to receive an acknowledgement from the parent or eligible student that he or she has received the notification. The sending school is not required to further notify a parent or eligible student in those cases in which the transfer of the records is initiated by the parent or eligible student at the sending school.

20. Section 99.35 *Disclosure to certain Federal and State officials for Federal program purposes.*

Comment. A commenter asked for clarification regarding whether Federal officials, other than those Federal officials listed in Section 438(b)(3), could obtain information from the education records of a student without the written consent of a parent of a student or an eligible student.

Response. Section 438(b)(3) enumerates the purposes for which certain Federal and State officials who may obtain information from the education records of a student without the written consent of the parent of a student or an eligible student under Section 438 of the Act and this part. It does not represent an attempt at an exhaustive listing of all the specific authorized representatives of those officials who might have responsibility for performing the functions described in 438(b)(3).

Other changes. Section 99.37 *Release to Federal and State officials* of the proposed rules has been renumbered and retitled Section 99.35 *Disclosure to certain Federal and State officials for Federal program purposes.*

21. Section 99.36 *Conditions for disclosure in health and safety emergencies.*

Comment. Two commenters recommended that the regulations specify that the written consent of a parent of a student or an eligible student is not required for the disclosure of information from the education records of a student in a health or safety emergency.

Response. Section 99.31(a)(10) states that an educational agency or institution may disclose information from the education records of a student without the written consent of a parent of a student or an eligible student in a health or safety emergency, subject to the conditions set forth in section 99.36.

Comment. A commenter stated that the decision as to what constitutes a health or safety emergency should be left to the discretion of an official of an educational agency or institution.

Response. Section 99.36(a) states that an educational agency or institution may disclose information from the education records of a student in a health or safety emergency, but does not specify what constitutes a health or safety emergency. Each educational agency or institution must decide if there is a health or safety emergency which requires the disclosure of information from the education records of a student without the written consent of a parent of a student or an eligible student. Section 99.36(b) enumerates the criteria to be used by an educational agency or institution in making a decision as to whether or not to disclose the information without written consent.

Other Changes. Section 99.35 *Release of information for health or safety emergencies* of the proposed rules has been renumbered and retitled section 99.36 *Conditions for disclosure in health and safety emergencies.*

22. Section 99.37 *Conditions for disclosure of directory information.*

Comment. Three commenters requested clarification regarding what would satisfy the requirement that an educational agency or institution give public notice of the categories of information that it has designated as directory information. The commenter suggested that the regulations specify that in the case of an institution of postsecondary education a notice in the school catalog would satisfy the requirement.

Response. New section 99.37(b) states that an educational agency or institution shall "give public notice." The actual means to be used is to be determined by each educational agency or institution. An institution of postsecondary education could, for instance, publish the required notice and/or an article explaining it in the student newspaper, and make copies of the notice available at various department and school administrative offices.

Comment. A commenter suggested that each educational agency or institution be required to provide notification on an annual basis to parents of students or eligible students sixty days before the beginning of the school year as to the categories of personally identifiable information which the educational agency or institution has designated as directory information. If a parent of a student or an eligible student wanted to prohibit the disclosure of any category of information, he or she would be required to inform the educational agency or institution before or by the start of the school year.

Response. It was felt that it would be extremely difficult for an educational agency or institution to provide notification to parents of students or eligible students 60 days before the start of the school year. Many educational agencies and institutions, particularly institutions of elementary and secondary education, employ a limited number of individuals during the school vacation months. In addition, many educational agencies and institutions do not have an accurate list of students who will be in attendance at the agency or institution until the opening day of school or classes.

Comment. Several commenters indicated they felt that there should be restrictions on the disclosure of directory information by an educational agency or institution.

Response. An educational agency or institution which has followed the procedures set forth under section 99.37 may disclose directory information to any member of the public. Nothing in section 438 of the Act or this part would preclude an educational agency or institution adopting a more restrictive policy regarding the disclosure of directory information.

SUBPART E—ENFORCEMENT

23. *Assurances required—general.*

Comment. Two commenters suggested that each educational agency or institution be required to submit copies of the policies and procedures it has adopted in order to comply with section 438 of the Act and this part either in place of or in addition to the required assurance.

Response. Submission of copies of policies and procedures adopted by educational agencies or institutions is not considered to be an effective means of monitoring compliance with section 438 of the Act and this part, since it is an institution's practice which is of primary importance. However, the policies and procedures formulated and adopted by an educational agency or institution will be subject to review by the office established under section 99.60 as a part of its investigative function.

Comment. A commenter recommended that the requirement that each educational agency or institution submit an assurance that it is in compliance and will continue to comply with section 438 of the Act and this part be deleted because it has no statutory basis.

Response. The requirement that each educational agency or institution submit an assurance that it is in compliance has been deleted, primarily, to avoid additional paperwork burdens on the educational community. The assurance requirement for subgrants and subcontracts has, likewise, been deleted.

24. *Assurances—conflict with State or local law.*

Comment. Several commenters indicated they felt that the procedures for a waiver of the requirements of section 438 of the Act and this part set forth in sections 99.63(b) and (c) of the proposed rules were either unnecessary or inappropriate.

Response. Sections 99.63(b) and (c) of the proposed rules have been deleted. The section has been modified to provide that each educational agency or institution shall inform the office designated to administer the Act if a State or local law exists which conflicts with the requirements of section 438 of the Act and this part.

25. Section 99.62 *Reports and records.*

Comment. A commenter recommended that section 99.64 be revised to specify the types of records and reports which are to be maintained by each educational agency or institution.

Response. The intent of section 99.62 (proposed section 99.64) is to ensure that each educational agency or institution will provide records or reports which may be required by the office or review board to carry out their assigned functions. The nature of such reports and records must be determined on a case-by-case basis. No change has been made in the regulations.

26. Section 99.63 *Complaint procedures.*

Comment. Several commenters recommended that section 99.65(b) of the proposed rules which established a 180-day limitation for the filing of complaints be deleted because it was inappropriate.

Response. Section 99.65(b) has been deleted.

Comment. A commenter suggested that the complaint procedures specify the information which is to be contained in a complaint.

Response. It was felt that most complaints will contain the minimal information which is necessary to begin an investigation of a complaint of an alleged violation of section 438 of the Act or this part. It is the responsibility of the office, as a part of its investigative function, to obtain additional information from the concerned complainant and educational agency or institution. No change has been made in the regulations.

Effective date. These regulations shall be effective on June 17, 1976.

Dated: June 8, 1976.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

Subpart A—General

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AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g) unless otherwise noted.

Subpart A—General

§ 99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal program for which the U.S. Commissioner of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.]

(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational agency or institution solely because students attending that nonmonetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.

(20 U.S.C. 1232g)

§ 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

§ 99.3 Definitions.

As used in this Part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247, as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

"Commissioner" means the U.S. Commissioner of Education.

(20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

[20 U.S.C. 1232g(b)(1)]

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in § 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

(20 U.S.C. 1232g(a)(3))

"Education records" (a) means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; *Provided*, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3)(i) Records relating to an individual who is employed by an educational agency or institution which:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee, and

(C) Are not available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Not disclosed to anyone other than individuals providing the treatment; *Provided*, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

(20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(20 U.S.C. 1232g(d))

"Financial Aid", as used in § 99.31(a)(4), means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

(20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

(20 U.S.C. 1232g(d))

"Panel" means the body which will adjudicate cases under procedures set forth in §§ 99.65–99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to, handwriting, print, tapes, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Health, Education, and Welfare.

(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.

(20 U.S.C. 1232g(a)(5))

§ 99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of § 99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.

(20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

§ 99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of—

(1) Informing parents of students or eligible students of their rights under § 99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with § 99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by §§ 99.31 and 99.37; the policy shall include, at least: (i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under § 99.31(a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest", and (ii) a specification of the personally identifiable information to be designated as directory information under § 99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by § 99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in § 99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

[20 U.S.C. 1232g (e) and (f)]

§ 99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution

annual notice by such means as are reasonably likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under § 99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

(2) The right to file complaints under § 99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

[20 U.S.C. 1232g(e)]

§ 99.7 Limitations on waivers.

(a) Subject to the limitations in this section and § 99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(c) An individual who is an applicant for admission to an institution of postsecondary education or is a student in attendance at an institution of postsecondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation described in § 99.12(a) (3) except that the waiver may apply to confidential letters and statements only if: (1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are used only for the purpose for which they were originally intended, and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution.

(d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f)(1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

[20 U.S.C. 1232g(a)(1) (B) and (C)]

§ 99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; *Provided*, That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

[20 U.S.C. 1232g(a)(1)]

Subpart B—Inspection and Review of Education Records

§ 99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by § 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

§ 99.12 Limitations on right to inspect and review education records at the postsecondary level.

(a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records:

(1) Financial records and statements of their parents or any information contained therein;

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; *Provided*, That:

(i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and

(ii) The letters and statements are used only for the purposes for which they were specifically intended;

(3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975:

(i) Respecting admission to an educational institution;

(ii) Respecting an application for employment, or

(iii) Respecting the receipt of an honor or honorary recognition; *Provided*, That the student has waived his or her right to inspect and review those letters and statements of recommendation under § 99.7(c).

(20 U.S.C. 1232g(a)(1)(B))

(b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

(20 U.S.C. 1232g(a)(1)(A))

§ 99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under § 99.11;

(b) Explanations placed in the education record under § 99.21 shall be maintained as provided in § 99.21(d), and

(c) The record of access required under § 99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(20 U.S.C. 1232g(f))

Subpart C—Amendment of Education Records

§ 99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under § 99.21.

[20 U.S.C. 1232g(a)(2)]

§ 99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with § 99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

[20 U.S.C. 1232g(a)(2)]

§ 99.22 Conduct of the hearing.

The hearing required to be held by § 99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

[20 U.S.C. 1232g(a)(2)]

Subpart D—Disclosure of Personally Identifiable Information From Education Records

§ 99.30 Prior consent for disclosure required.

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in § 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

[20 U.S.C. 1232g(b)(1) and (b)(2)(A)]

§ 99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is—

(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34;

(3) Subject to the conditions set forth in § 99.35, to authorized representatives of:

(i) The Comptroller General of the United States,

(ii) The Secretary,

(iii) The Commissioner, the Director of the National Institute of Education, or the Assistant Secretary for Education, or

(iv) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; *Provided*, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,

(ii) To determine the amount of the financial aid,

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This subparagraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this subparagraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; *Provided*, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; *Provided*, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in § 99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

[20 U.S.C. 1232g(b)(1)]

§ 99.32 Record of disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials under § 99.31(a)(1), or to disclosures of directory information under § 99.37.

(c) The record of disclosures may be inspected:

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in § 99.31(a)(1) and (3).

(20 U.S.C. 1232g(b)(4)(A))

§ 99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under that section; *Provided*, That the recordkeeping requirements of § 99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under § 99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

[20 U.S.C. 1232g(b)(4)(B)]

§ 99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under § 99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student, or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; *Provided*, That the disclosure meets the requirements of paragraph (a) of this section.

[20 U.S.C. 1232g(b)(1)(B)]

§ 99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in § 99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under § 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in § 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements.

[20 U.S.C. 1232g(b)(3)]

§ 99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

[20 U.S.C. 1232g(b)(1)(I)]

§ 99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in § 99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

[20 U.S.C. 1232g(a)(5)(A) and (B)]

Subpart E—Enforcement

§ 99.60 Office and review board.

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part. The review board will adjudicate cases referred to it by the office under the procedures set forth in §§ 99.65–99.67.

(b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, 330 Independence Ave. SW., Washington, D.C. 20201.

(20 U.S.C. 1232g(g))

§ 99.61 Conflict with State or local law.

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office designated under § 99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.

(20 U.S.C. 1232g(f))

§ 99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.

(20 U.S.C. 1232g(f) and (g))

§ 99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b)(1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c)(1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c)(2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph (c)(3) of this section, the matter will be referred to the Review Board for a hearing under §§ 99.64–99.67, inclusive.

(20 U.S.C. 1232g(f))

§ 99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1(a) shall be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.

(20 U.S.C. 1232g(f))

§ 99.65 Hearing procedures.

(a) *Panels.* The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) *Procedural rules.* (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party: (A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1)(ii) of this paragraph, provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(20 U.S.C. 1232g(g))

§ 99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

(20 U.S.C. 1232g(g))

§ 99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.

(20 U.S.C. 1232g(g))

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APPENDIX B

ILLINOIS SCHOOL STUDENT RECORDS ACT

AND

RULES AND REGULATIONS TO GOVERN SCHOOL STUDENT RECORDS

MISCELLANEOUS LAWS

ILLINOIS SCHOOL STUDENT RECORDS ACT

P.A. 79-1108, eff. March 24, 1976

Par.
50-1. Short title.
50-2. Definitions.
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50-4. Custodian—Permanent and temporary records.
50-5. Inspection and access.
50-6. Parties entitled to access—Notice to parents—Record of release—Consent.
50-7. Challenges.
50-8. Rights conditioned on securing information from temporary record.
50-9. Actions—Violations.
50-10. Severability.

AN ACT relating to the school records of students. P.A. 79-1108, approved Sept. 26, 1975, eff. March 24, 1976.

50-1. Short title

§ 1. This Act shall be known and may be cited as the Illinois School Student Records Act.

50-2. Definitions

§ 2. As used in this Act,

(a) "Student" means any person enrolled or previously enrolled in a school.

(b) "School" means any public preschool, day care center, kindergarten, nursery, elementary or secondary educational institution, vocational school, special educational facility or any other elementary or secondary educational agency or institution and any person, agency or institution which maintains school student records from more than one school, but does not include a private or non-public school.

(c) "State Board" means the State Board of Education.

(d) "School Student Record" means any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored. The following shall not be deemed school student records under this Act: writings or other recorded information maintained by an employee of a school or other person at the direction of a school for his or her exclusive use; provided that all such writings and other recorded information are destroyed not later than the student's graduation or permanent withdrawal from the school; and provided further that no such records or recorded information may be released or disclosed to any person except a person designated by the school as a substitute unless they are first incorporated in a school student record and made subject to all of the provisions of this Act.

(e) "Student Permanent Record" means the minimum personal information necessary to a school in the education of the student and contained in a school student record. Such information may include the student's name, birth date, address, grades and grade level, parents' names and addresses, attendance records, and such other entries as the State Board may require or authorize.

(f) "Student Temporary Record" means all information contained in a school student record but not contained in the student permanent record. Such information may include family background information, intelligence test scores, aptitude test scores, psychological and personality test results, teacher evaluations, and other information of clear relevance to the education of the student, all subject to regulations of the State Board.

(g) "Parent" means a person who is the natural parent of the student or other person who has the primary responsibility for the care and upbringing of the student. All rights and privileges accorded to a parent under this Act shall become exclusively those of the student upon his 18th birthday, graduation from secondary school, marriage or entry into military service, whichever occurs first. Such rights and privileges may also be exercised by the student at any time with respect to the student's permanent school record.

50-3. Rules and regulations

§ 3. (a) The State Board shall issue regulations to govern the contents of school student records, to implement and assure compliance with the provisions of this Act and to prescribe appropriate procedures and forms for all administrative proceedings, notices and consents required or permitted under this Act. All such regulations and any rules and regulations adopted by any school relating to the maintenance of, access to, dissemination of or challenge to school student records shall be available to the general public.

(b) The State Board, each local school board or other governing body and each school shall take reasonable measures to assure that all persons accorded rights or obligations under this Act are informed of such rights and obligations.

(c) The principal of each school or the person with like responsibilities or his or her designate shall take all action necessary to assure that school personnel are informed of the provisions of this Act.

50-4. Custodian—Permanent and temporary records

§ 4. (a) Each school shall designate an official records custodian who is responsible for the maintenance, care and security of all school student records, whether or not such records are in his personal custody or control.

(b) The official records custodian shall take all reasonable measures to prevent unauthorized access to or dissemination of school student records.

(c) Information contained in or added to a school student record shall be limited to information which is of clear relevance to the education of the student.

(d) Information added to a student temporary record after the effective date of this Act shall include the name, signature and position of the person who has added such information and the date of its entry into the record.

(e) Each school shall maintain student permanent records and the information contained therein for not less than 60 years after the student has transferred, graduated or otherwise permanently withdrawn from the school.

(f) No school shall maintain any student temporary record or the information contained therein beyond its period of usefulness to the student and the school, and in no case longer than 5 years after the student has transferred, graduated or otherwise permanently withdrawn from the school. Notwithstanding the foregoing, a school may maintain indefinitely anonymous information from student temporary records for authorized research, statistical reporting or planning purposes, provided that no student or parent can be individually identified from the information maintained.

(g) The principal of each school or the person with like responsibilities or his or her designate shall periodically review each student temporary record for verification of entries and elimination or correction of all inaccurate, misleading, unnecessary or irrelevant information. The State Board shall issue regulations to govern the periodic review of the student temporary records and length of time for maintenance of entries to such records.

(h) Before any school student record is destroyed or information deleted therefrom, the parent shall be given reasonable prior notice in accordance with regulations adopted by the State Board and an opportunity to copy the record and information proposed to be destroyed or deleted.

(i) No school shall be required to separate permanent and temporary school student records of a student not enrolled in such school on or after the effective date of this Act or to destroy any such records, or comply with the provisions of paragraph (g) of this Section with respect to such records, except (1) in accordance with the request of the parent that any or all of such actions be taken in compliance with the provisions of this Act or (2) in accordance with regulations adopted by the State Board.

50-5. Inspection and access

§ 5. (a) A parent or any person specifically designated as a representative by a parent shall have the right to inspect and copy all school student permanent and temporary records of that parent's child. A student shall have the right to inspect and copy his or her school student permanent record.

(b) Whenever access to any person is granted pursuant to paragraph (a) of this Section, at the option of either the parent or the school a qualified professional, who may be a psychologist, counsellor or other advisor, and who may be an employee of the school or employed by the parent, may be present to interpret the information contained in the student temporary record. If the school requires that a professional be present, the school shall secure and bear any cost of the presence of the professional. If the parent so requests, the school shall secure and bear any cost of the presence of a professional employed by the school.

(c) A parent's or student's request to inspect and copy records, or to allow a specifically designated representative to inspect and copy records, must be granted within a reasonable time, and in no case later than 15 school days after the date of receipt of such request by the official records custodian.

(d) The school may charge its reasonable costs for the copying of school student records, not to exceed the amounts fixed in schedules adopted by the State Board, to any person permitted to copy such records, except that no parent or student shall be denied a copy of school student records as permitted under this Section 5 for inability to bear the cost of such copying.

(e) Nothing contained in this Section 5 shall make available to a parent or student confidential letters and statements of recommendation furnished in connection with

applications for employment to a post-secondary educational institution or the receipt of an honor or honorary recognition, provided such letters and statements are not used for purposes other than those for which they were specifically intended, and

(1) were placed in a school student record prior to January 1, 1975; or

(2) the student has waived access thereto after being advised of his right to obtain upon request the names of all such persons making such confidential recommendations.

(f) Nothing contained in this Act shall be construed to impair or limit the confidentiality of:

(1) Communications otherwise protected by law as privileged or confidential, including but not limited to, information communicated in confidence to a physician, psychologist or other psychotherapist; or

(2) Information which is communicated by a student or parent in confidence to school personnel.

50-6. Parties entitled to access—Notice to parents—Record of release—Consent

§ 6. (a) No school student records or information contained therein may be released, transferred, disclosed or otherwise disseminated, except as follows:

(1) To a parent or student or person specifically designated as a representative by a parent, as provided in paragraph (a) of Section 5; [1]

(2) To an employee or official of the school or school district or State Board with current demonstrable educational or administrative interest in the student, in furtherance of such interest;

(3) To the official records custodian of another school within Illinois or an official with similar responsibilities of a school outside Illinois, in which the student has enrolled, or intends to enroll, upon the request of such official or student;

(4) To any person for the purpose of research, statistical reporting or planning, with the permission of the State Board or an authorized official of such Board, provided that no student or parent can be identified from the information released;

(5) Pursuant to a court order, provided that the parent shall be given prompt written notice upon receipt of such order of the terms of the order, the nature and substance of the information proposed to be released in compliance with such order and an opportunity to inspect and copy the school student records and to challenge their contents pursuant to Section 7; [2]

(6) To any person as specifically required by State or federal law; or

(7) Subject to regulations of the State Board, in connection with an emergency, to appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons;

(8) To any person, with the prior specific dated written consent of the parent designating the person to whom the records may be released, provided that at the time any such consent is requested or obtained, the parent shall be advised in writing that he has the right to inspect and copy such records in accordance with Section 5, to challenge their contents in accordance with Section 7 and to limit any such consent to designated records or designated portions of the information contained therein.

(b) No information may be released pursuant to subparagraphs (3) or (6) of paragraph (a) of this Section 6 unless the parent receives prior written notice of the nature and substance of the information proposed to be released, and an opportunity to inspect and copy such records in accordance with Section 5 and to challenge their contents in accordance with Section 7. Provided, however, that such notice shall be sufficient if published in a local newspaper of general circulation or other publication directed generally to the parents involved where the proposed release of information is pursuant to subparagraph 6 of paragraph (a) in this Section 6 and relates to more than 25 students.

(c) A record of any release of information pursuant to this Section must be made and kept as a part of the school student record and subject to the access granted by Section 5. Such record of release shall be maintained for the life of the school student records and shall be available only to the parent and the official records custodian. Each record of release shall also include:

(1) The nature and substance of the information released;

(2) The name and signature of the official records custodian releasing such information;

(3) The name of the person requesting such information, the capacity in which such a request has been made, and the purpose of such request;

(4) The date of the release; and

(5) A copy of any consent to such release.

(d) Except for the student and his parents, no person to whom information is released pursuant to this Section and no person specifically designated as a representative by a parent may permit any other person to have access to such information without a prior consent of the parent obtained in accordance with the requirements of subparagraph (8) of paragraph (a) of this Section.

(e) Nothing contained in this Act shall prohibit the publication of student directories which list student names, addresses and other identifying information and similar publications which comply with regulations issued by the State Board.

[1] Paragraph 50-5 of this chapter.
[2] Paragraph 50-7 of this chapter.

50-7. Challenges

§ 7. (a) Parents shall have the right to challenge the accuracy, relevance or propriety of any entry in the school student records, exclusive of academic grades of their child.

(b) The State Board shall prescribe by regulation procedures to govern challenges to school student records under this Act. Such challenge procedures shall provide for a hearing at which each party shall have:

(1) The right to present evidence and to call witnesses;

(2) The right to cross-examine witnesses;

(3) The right to counsel;

(4) The right to a written statement of any decision and the reasons therefor;

(5) The right to appeal an adverse decision to an administrative tribunal or official to be established or designated by the State Board.

(c) A final decision under the procedures established pursuant to this Section may be appealed to the Circuit Court of the County in which the school is located.

(d) Parents shall also have the right to insert in their child's school student record a statement of reasonable length setting forth their position on any disputed information contained in that record. The school shall include a copy of such statement in any subsequent dissemination of the information in dispute.

50-8. Rights conditioned on securing information from temporary record

§ 8. No person may condition the granting or withholding of any right, privilege or benefit or make as a condition of employment, credit or insurance the securing by any individual of any information from a student's temporary record which such individual may obtain through the exercise of any right secured under this Act.

50-9. Actions—Violations

§ 9. (a) Any person aggrieved by any violation of this Act may institute an action for injunctive relief in the Circuit Court of the County in which the violation has occurred or the Circuit Court of the County in which the school is located.

(b) Any person injured by a wilful or negligent violation of this Act may institute an action for damages in the Circuit Court of the County in which the violation has occurred or the Circuit Court of the County in which the school is located.

(c) In the case of any successful action under paragraph (a) or (b) of this Section, any person or school found to have wilfully or negligently violated any provision of this Act is liable to the plaintiff for the plaintiff's damages, the costs of the action and reasonable attorneys' fees, as determined by the Court.

(d) Actions for injunctive relief to secure compliance with this Act may be brought by the State Board, by the State's Attorney of the County in which the alleged violation has occurred or the State's Attorney of the County in which the school is located, in each case in the Circuit Court of such County.

(e) Wilful failure to comply with any Section of this Act is a petty offense.

(f) Absent proof of malice, no cause of action or claim for relief, civil or criminal, may be maintained against any school, or employee or official of a school or person acting at the direction of a school for any statement made or judgment expressed in any entry to a school student record of a type which does not violate this Act or the regulations issued by the State Board pursuant to this Act; provided that this paragraph (f) does not limit or deny any defense available under existing law.

50-10. Severability

§ 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

COMPACT FOR EDUCATION

Act of July 26, 1967

Par.
100-1. Ratification—Contents.
100-2. State representatives.
100-3. Illinois educational council.
100-4. Bylaws—Filing.

AN ACT ratifying and approving an Interstate Compact for Education, providing for the administration thereof and making appropriations in connection therewith. Laws 1967, p. 2201, approved and eff. July 26, 1967.

100-1. Ratification—Contents

§ 1. The State of Illinois ratifies and approves the following compact:

THE COMPACT FOR EDUCATION

ARTICLE I. PURPOSE AND POLICY.

A. It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the State and local levels.

2. Provide a forum for the discussion, development, crystalization and recommendation of public policy alternatives in the field of education.

3. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the Nation, so that the executive and legislative branches of State Government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

4. Facilitate the improvement of State and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and State initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and States.

C. The party States recognize that each of them has an interest in the quality and quantity of education furnished in each of the other States, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the Nation, and because the products and services contributing to the health, welfare and economic advancement of each State are supplied in significant part by persons educated in other States.

ARTICLE II. STATE DEFINED.

As used in this Compact, "State" means a State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III. THE COMMISSION.

A. The Educational Commission of the States, hereinafter called "the Commission", is hereby established. The Commission shall consist of seven members representing

ILLINOIS STATE BOARD OF EDUCATION
Donald G. Gill
State Superintendent of Education

RULES AND REGULATIONS
To Govern

SCHOOL STUDENT RECORDS

Based on the

Illinois School Student Record Act of 1975

(Filed pursuant to Chapter 122, Article 50, Illinois Revised Statutes, 1975, and effective March 24, 1976)

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DEFINITION

ARTICLE I

1.01 "Act" means the Illinois School Student Records Act.

1.02 "Substitute" means a person designated by the school to temporarily serve in the event of absence of a person employed by the school. (Ref: Art. 50 - 2(d)).

1.03 Student Permanent Record (Ref: Art. 50 2(e)).

1. Shall consist of:

   a. Basic identifying information, including students and parents names and addresses, birth date and place, and gender;

   b. Academic transcript, including grades, class rank, graduation date, grade level achieved and scores on college entrance examinations;

   c. Attendance record;

   d. Accident reports and health record;

   e. Record of release of permanent record information; and,

2. May also consist of:

   a. Honors and awards received; and,

   b. Information concerning participation in school-sponsored activities or athletics, or offices held in school-sponsored organizations.

3. No other information shall be placed in the student permanent record.

1.04 Student Temporary Record (Ref: Art. 50 - 2(f) consists of all information not required to be in the student permanent record and may include:

1. Family background information;

2. Intelligence test scores, group and individual;

3. Aptitude test scores;

4. Reports of psychological evaluations including information on intelligence, personality and academic information obtained through test administration, observation, or interviews;

5. Elementary and secondary achievement level test results;

6. Participation in extracurricular activities including any offices held in school sponsored clubs or organizations;

7. Honors and awards received;

8. Teacher anecdotal records;

9. Disciplinary information;

10. Special education files including the report of the multi-disciplinary staffing on which placement or non-placement was based, and all records and tape recordings relating to special education placement hearings and appeals;

11. Any verified reports or information from non-educational persons, agencies or organizations;

12. Other verified information of clear relevance to the education of the student; and,

13. Record of release of temporary record information.

RIGHTS OF STUDENTS (Ref: Art. 50 - 2(g))

ARTICLE II

A school may afford to students any or all of the rights afforded to parents under the Act or these regulations in relation to the temporary record.

NOTIFICATION (Ref: Art. 50 - 3 through 50 - 6 inclusive)

ARTICLE III

3.01 The school shall notify by October 1, 1976, all students in the school and the parents of such students of the rights afforded by the Act as specified in 3.04 of this Article. Thereafter, upon the initital enrollment or transfer of a student to the school, such notification shall be provided to the student and the parent(s) of the student.

3.02 All notification under these regulations to parents of children classified under Ill. Rev. Stat. 1975, Section 14 c-3, to be of limited English-speaking ability shall be both in English and in the language of which the child of the parents so notified possesses a primary speaking ability.

3.03 This notification may be delivered by any means likely to reach the parents, including direct mail, parent-teacher conferences, delivery by the student to the parent, or incorporated in a "parent-student" handbook or other informational brochure for students and parents disseminated by the school.

3.04 Such notification shall consist of:

1. The types of information contained in the permanent and temporary records;

2. The right to inspect and copy permanent and temporary records and the cost of copying such records;

3. The right to control access and release of school student records and the right to request a copy of information released;

4. The rights and procedures for challenging the contents of the school student record;

5. The persons, agencies or organizations having access to student records without parental consent;

6. The right to copy any school student record or information contained therein proposed to be destroyed or deleted and the school's schedule for reviewing and destroying such information;

7. The categories of information the school has designated as "directory information" and the right of the parents to prohibit the release of such information;

8. A statement informing the parents that no person may condition the granting or withholding of any right, privilege or benefits or make as a condition of employment, credit or insurance the securing by any individual of any information from a student's temporary record which such individual may obtain through the exercise of any right secured under the Act or these regulations.

9. The right of the parents to inspect and challenge the information contained in a school student record prior to transfer of the record to another school district, in the event of the transfer of the student to that district; and,

10. Any policies of the school relating to school student records which are not included in the Act or these regulations.

3.05 The principal of each school or the person with like responsibilities or his or her designate shall take all action necessary to assure that school personnel are informed of the provisions of the Act and these regulations.

MAINTENANCE (Ref: Art. 50 - 4)

ARTICLE IV

4.01 The provisions within the Act and these regulations requiring records to be separated into permanent and temporary categories shall apply only to records of students who are enrolled in the school on or after the effective date of these regulations. Records on students who have graduated or permanently withdrawn prior to the effective date of these regulations are not subject to these classifications except:

1. In compliance with the request of a parent or eligible student that such categorization occur; and,

2. The records custodian shall take reasonable steps to ensure that information characterized by the Act and these regulations as "temporary" shall not be released unless specifically requested by the parent or eligible student.

4.02 The review of student records to verify entries and eliminate or correct all out-of-date, misleading, inaccurate, unnecessary or irrelevant information shall be conducted by March 24, 1977, on all records of students enrolled on the effective date of these regulations. Thereafter, the records shall be reviewed every four years or upon a student's change in attendance centers, whichever occurs first. This section does not apply to records of students who have graduated, transferred, or permanently withdrawn prior to March 24, 1976.

4.03 Upon graduation, transfer or permanent withdrawal of a student from a school, the school shall notify the parents and the student of the destruction schedule for the student permanent record and the student temporary record and of the right to request a copy of such records at any time prior to their destruction.

4.04 Upon graduation or permanent withdrawal of a handicapped student (as defined in Ill. Rev. Stat. 1975, Ch. 122, Article 14 and the Rules and Regulations to Govern the Administration and Operation of Special Education), psychological evaluations, special education files and other information contained in the student temporary record which may be of continued assistance to the student may, after five years, be transferred to the custody of the parent or to the student if the student has succeeded to the rights of the parents. The school shall explain to the student and the parent the future usefulness of these records.

COSTS FOR COPIES OF RECORDS (Ref: Art. 50 - 5(d))

ARTICLE V

5.01 The school may charge the actual cost for providing a copy of school student records or any portion of such records to parents and students upon request for such copies, provided that such costs shall not exceed $.35 per page.

5.02 No parent or student shall be denied a requested copy of school student records due to inability to bear the cost of such copying.

EMERGENCY RELEASE OF INFORMATION (Ref: Art. 50 - 6, (a) (7))

ARTICLE VI

6.01 Information may be released without parental consent in connection with an emergency to appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons, provided that the parents are notified as soon as possible of the information released, the date of the release, the person, agency, or organization receiving the information, and the purpose of the release.

6.02 Factors to be considered in determining whether records should be released pursuant to this paragraph include:

1. The seriousness of the threat to the health or safety of the student or other persons;

2. The need for such records to meet the emergency;

3. Whether the persons to whom such records are released are in a position to deal with the emergency;

4. The extent to which time is of the essence in dealing with the emergency.

6.03 The requirements and criteria for release of information pursuant to this section are to be strictly construed.

RELEASE OF INFORMATION (Ref: Art. 50 - 6, (a) through (d))

ARTICLE VII

7.01 The records of a student shall be transferred by the records custodian of a school to another school in which the student has enrolled or intends to enroll upon the request of the records custodian of the other school or the student, provided that the parent receives prior written notice of the nature and substance of the information to be transferred and opportunity to inspect, copy, and challenge such information. If the address of the parents is unknown, notice may be served upon the records custodian of the requesting school for transmittal to the parents. Such service shall be deemed conclusive, and ten school days after such service, if the parents make no objection, the records may be transferred to the requesting school.

7.02 The school shall grant access to information contained in school student records to persons authorized or required by State or federal law to gain such access, provided that:

1. Such person shall provide the school with appropriate identification and a copy of the statute authorizing such access; and,

2. The parent receives prior written notice of the nature and substance of the information to be released and an opportunity to inspect, copy and/or challenge such information. If this release of information relates to more than

25 students, such prior notice may be given in a local newspaper of general circulation or other publication directed generally to parents.

7.03 The school shall grant access to, or release information from, school student records without parental consent or notification:

1. To an employee or official of the school or school district or the State Board of Education, provided such employee or official or State Board of Education has a current demonstrable educational or administrative interest in the student and the records are in furtherance of such interest;

2. To any person for the purpose of research, statistical reporting, or planning, provided that:

   a. Such person has the permission of the State Superintendent of Education; and,

   b. No student or parent can be identified from the information released;

3. Pursuant to a court order, provided that the procedures outlined in Ill. Rev. Stats. 1975, Ch. 122, Article 50 - 6(a), (5) are observed.

7.04 Any release of information other than specified in 7.01 through 7.03 of this Article requires the prior, specific, dated, written consent of the parent designating the person to whom such records may be released, the reason for the release, and the specific records to be released. At the time such consent is requested or obtained, the school shall inform the parents of the following rights:

1. To inspect and copy such records;

2. To challenge the contents of such records; and,

3. To limit any such consent to designated records or designated portions of information within the records.

DIRECTORY INFORMATION (Ref: Art. 50 - 6(e))

ARTICLE VIII

8.01 Information that may be designated as directory information shall be limited to:

1. Identifying information: name, address, gender, grade level, birth date and place, and parents' names and addresses;

2. Academic awards, degrees, and honors;

3. Information in relation to school-sponsored activities, organizations, and athletics;

4. Major field of study; and,

5. Period of attendance in the school.

8.02 "Directory Information" may be released to the general public, unless a parent requests that any or all such information not be released on his/her child.

CHALLENGE PROCEDURES (Ref: Art. 50 - 7)

ARTICLE IX

9.01 Parents shall have the right to challenge any entry exclusive of grades in the school student records on the basis of:

1. accuracy;

2. relevance; and/or,

3. propriety.

9.02 The request for a hearing shall be submitted in writing to the school and shall contain notice of the specific entry or entries to be challenged and the basis of the challenge.

9.03 Each school shall establish administrative procedures for parents to challenge the contents of student records. Such procedures shall include:

1. An initial informal conference with the parents, within 15 school days of receipt of the request for a hearing.

2. If the challenge is not resolved by the informal conference, formal procedures shall be initiated:

   a. A hearing officer, who shall not be employed in the attendance center in which the student is enrolled, shall be appointed by the school.

   b. The hearing officer shall conduct a hearing within a reasonable time, but no later than 15 days after the informal conference, unless an extension of time is agreed upon by the parents and school officials. The hearing officer shall notify parents and school officials of the time and place of the hearing.

   c. At the hearing each party shall have the rights outlined in the Act (see Art. 50 - 7, (b) (1) through (4)).

d. A verbatim record of the hearing shall be made by a tape recorder or a court reporter. A typewritten transcript may be prepared by either party in the event of an appeal of the hearing officer's decision. However, a typewritten transcript is not required in an appeal.

e. The decision of the hearing officer shall be rendered no later than 10 school days after the conclusion of the hearing and shall be transmitted immediately to the parents and school district. It shall be based solely on the information presented at the hearing and shall be one of the following:

1. To retain the challenged contents of the student record;

2. To remove the challenged contents of the student record; or,

3. To change, clarify or add to the challenged contents of the student record.

9.04 Any party shall have the right to appeal the decision of the local hearing officer to the Superintendent of the Educational Service Region within 20 school days after such decision is transmitted. If the parent appeals, the parent shall so inform the school and within 10 school days the school shall forward a transcript of the hearing, a copy of the record entry in question and any other pertinent materials to the Superintendent of the Educational Service Region. The school may initiate an appeal on its own behalf by the same procedures. Upon receipt of such documents, the Superintendent of the Educational Service Region shall examine the documents and record, make findings and issue a decision to the

parents and the school within 20 school days of the receipt of the appeal documents. If the subject of the appeal involves the accuracy, relevance or propriety of any entry in special education records, the Educational Service Region should seek advice from appropriate special education personnel who were not the authors of the entry.

9.05 The school shall be responsible for implementing the decision of the Superintendent of the Educational Service Region.

IMPLEMENTATION (Ref: Art. 50 - 3)

ARTICLE X

Each school and school district shall adopt policies and procedures in compliance with the Act and these regulations.

ENFORCEMENT (Ref: Art. 50 - 3, (a) (b) and Art. 50 - 9(d))

ARTICLE XI

11.01 The State Board of Education and the State Superintendent of Education shall collect and maintain information concerning compliance with the provisions of the Act and these rules and regulations and shall take action as specified by the Act to secure compliance in the event of violation.

11.02 Complaints arising from violations of the Act or these regulations, other than challenges of the contents of the school student records as specified in Section X of these regulations, shall be directed to the Superintendent of the Educational Service Region and then to the State Superintendent of Education as specified in Ill. Rev. Stats. 1975, Ch. 122, Article 3-10 and Article 2-3.8.

APPENDIX C

MAJOR PROVISIONS OF FEDERAL AND STATE STUDENT RECORDS MANDATES

APPENDIX C

MAJOR PROVISIONS OF FEDERAL AND STATE STUDENT RECORDS MANDATES

The following chart shows the major provisions of each statute in relation to each of thse areas of concern:

Topic Area	Federal Requirements	State Requirements
Definition	. Federal regulations define: Education Record Record Directory Information	. State statutes define: Student Permanent Record Student Temporary Record
Notification of Rights	. Annual notification . Using means most likely to inform parents . Describe policies . Fee should not inhibit request for copy of records	. Upon enrollment (one-time) . Using means most likely to reach parents (direct mail, student handbooks) . Describe written policies
Student and Parent Access	. Full access to parents . Access transfers to student at graduation or age 18 . At 18 student has exclusive access except for parents' financial information	. Full access to parents and students with permission . Access transfers exclusively to student at age 18 or upon graduation, marriage or entry into military service
Third Party Access	. Identifies who may or may not have access . Most circumstances require written permission of parent . Not addressed General requirements apply . Access list must be retained for the life of the record	. Sets conditions for third party access . Parents must receive written notification . Permission required from State Board if information for research is personally identifiable . Access list must be retained for the life of the record
Due Process	. Local district hearing at parent request . Allows accuracy of recording grades to be challenged	. Civil recourse . Exempts grades from challenge . Requires hearings; sets specific timelines

	. Authorizes conduct of hearings within a reasonable time . No provision for a second hearing	. If requested, requires a second level hearing by the Regional Superintendent
Compliance and Sanctions	. Assigns responsibility to each "educational agency or institution" without specifying the state agency as enforcement agency . Withdrawal of federal funds . No litigation provisions . Requires notification of right to complain directly to parents	. Assigns State Board and State Superintendent with responsibility for administrative procedures, forms, consents, etc. . Not addressed in student regulations. (The School Code of Illinois, Sections 50-9, (a)-(f), provides for civil litigation; State Board Document 1, Section 2-4.3, requires compliance as a component of district recognition status) . Refers parents to Regional Superintendent and State Superintendent
Maintenance		. Review of records every four years

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